

1                                   BEFORE THE  
2                                   POLLUTION CONTROL HEARINGS BOARD  
                                  STATE OF WASHINGTON

3   IN THE MATTER OF               )  
4   TEXACO, INC.,                 )

5                   Appellant,     )

6                   v.             )

7   STATE OF WASHINGTON,         )  
8   DEPARTMENT OF ECOLOGY,     )

9                   Respondent.   )  
                                  )

PCHB No. 930

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

10   PER W. A. GISSBERG:

11   Nature of case:   \$3,000 civil penalty pursuant to RCW 90.48.350  
12                                   for allegedly permitting the discharge of oil  
                                  into waters of the state.

13   Formal hearing:   March 28, 1976, Lacey, Washington.

14   Board members present:   Chris Smith, Chairman, W. A. Gissberg,  
15                                   and Walt Woodward.

16   Presiding officer:   David Akana, hearing examiner.

17   Court reporter:   Jennifer Roland.

18   For appellant:   Mark E. Johnson of Lane, Powell, Moss & Miller,  
                                  attorneys.

1 For respondent: Joseph J. McGoran, assistant attorney general.

2 FINDINGS OF FACT

3 1. On February 5, 1975, the ship M/V CITTA DI SAVONA arrived at  
4 appellant's Anacortes tank farm oil facility and prepared to discharge  
5 its oil cargo from ship to shore. Instead, oil flowed by force of  
6 gravity from appellant's shore facility to the ship and ultimately  
7 30 barrels were spilled into the waters of Guemes Channel.

8 2. Respondent, Department of Ecology (DOE), imposed upon the  
9 ship, or its owners, a civil penalty in the amount of \$5,000 for the  
10 failure of employees aboard the ship (none of whom were employed by  
11 appellant) to close a bypass valve on the vessel prior to starting its  
12 pumps to transfer oil ashore. The result was that the ship's pump  
13 merely circulated the oil aboard the ship. However, unbeknownst to all  
14 a further amount of oil entered the ship by gravity flow from  
15 appellant's shore facility through the oil transfer line. When the  
16 ship's tanks became full, the oil overflowed onto the deck and into  
17 the water. Respondent imposed upon appellant a civil penalty in the  
18 amount of \$3,000 for negligently permitting the discharge of oil.  
19 The amount of the penalty was determined after respondent had  
20 considered the gravity of the violation, the previous record of the  
21 violator and other appropriate considerations.

22 3. For 20 minutes after the ship started its pumps to purportedly  
23 transfer oil, everyone was unaware of any problem or malfunction.  
24 Appellant's employees could hear the ship's pumps working and the  
25 chief mate gave assurances that all was well.

26 4. Twenty minutes after pumping began, appellant's employee,

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1 Campbell, realized that there was a problem and that in his words,  
2 something "was drastically wrong." However, instead of putting  
3 appellant's emergency procedures<sup>1</sup> into effect, he drove from the  
4 blending plant to the dock, a 15 minute trip, during which time  
5 (unbeknownst to him) oil continued to discharge from the shore to the  
6 ship. Arriving at the dock, Campbell reaffirmed that which he had  
7 known earlier before leaving the blending plant, i.e., the ship's  
8 pumps were operating, but the shore tank was nonetheless losing oil.  
9 He then caused an order to be given for the ship to stop its pumping  
10 and 7 or 8 minutes thereafter pumping was secured and shore valves  
11 were closed.

12 5. Appellant has never before experienced an oil spill such as  
13 this one. Respondent Department of Ecology could not cite any oil  
14 spill similar to the matter at issue today.

15 6. The oil was promptly cleaned up. There was no evidence of  
16 any environmental damage.

17 7. Any Conclusion of Law hereinafter recited which should be  
18 deemed a Finding of Fact is hereby adopted as such.

19 CONCLUSIONS OF LAW

20 1. Appellant's Motion for Remission of Penalty: Respondent's

21  
22 1. Appellant's Operating Procedures provide in part that:

23 If an emergency shutdown is required during transfers  
24 from a vessel to shore tanks, notify the person in charge  
25 of the vessel to shut down the vessel's pumps immediately  
26 and secure the vessel's transfer manifold. When the  
valve on the vessel manifold is closed, the valve on the  
dock side of the hose may be blocked. Then notify the  
Blending Plant of the emergency. (p. 21, emphasis supplied).

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1 "Notice of Penalty Incurred and Due" and/or "Notice of Disposition  
2 Upon Application for Relief From Penalty" set forth the department's  
3 theory of the alleged violation. The department is thereafter limited  
4 to proving the violation on the theory advanced therein and no other,  
5 absent a timely amendment of its Notice. In this matter, the depart-  
6 ment amended its Notice of Disposition before the hearing and at no  
7 time was appellant misled. If the amendment was prejudicial, appellant's  
8 remedy would be to request a continuance, which it did not. Therefore,  
9 appellant's Motion for Remission of Penalty must be denied.

10 2. Oil pollution has been identified as an especially harmful  
11 source of water pollution and the Legislature has imposed particular  
12 liability on it. Not only is a person strictly liable for any damage  
13 caused by oil (RCW 90.48.336), but in addition to any other penalty  
14 provided by law, such person may incur an additional penalty under  
15 RCW 90.48.350. These provisions, and their companions found in  
16 RCW 90.48.315 through RCW 90.48.380, manifest a legislative concern  
17 that this potentially harmful pollutant, oil, be carefully handled.

18 3. Where, as here, one involved in an oil transfer becomes aware  
19 that something is drastically wrong, reasonable care requires that the  
20 oil transfer operation be stopped as promptly as possible. Appellant,  
21 instead of doing so, waited and continued to search for the cause of  
22 the problem. Such constitutes negligence. Had it promptly initiated  
23 its own emergency procedures [see footnote 1, supra] the spill could  
24 have been avoided.

25 4. Appellant's negligence permitted the entry of oil into the  
26 waters of the state and the civil penalty assessed therefor was proper

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1 under RCW 90.48.350.

2       5. While "attitude" may properly have a bearing on the amount of  
3 the penalty, the fact that appellant failed to directly notify  
4 respondent of the spill is not indicative of a poor attitude, or a  
5 need for a change of attitude. Nonetheless, the \$3,000 penalty was  
6 reasonable in amount and should be affirmed. However, although both  
7 the ship and appellant were negligent, neither's conduct, standing  
8 alone, would have proximately caused the spill. Rather, their combined  
9 acts of omission proximately caused the spill. Considering such, and  
10 all the other circumstances of this case, including the fact that  
11 appellant has subsequently made repairs so as to prevent future similar  
12 occurrence and its excellent record at Anacortes, payment of the penalty  
13 should be conditionally suspended.

14       6. Any Finding of Fact which should be deemed a Conclusion of  
15 Law is hereby adopted as such.

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ORDER

The \$3,000 civil penalty assessed by the Department of Ecology in Docket No. DE 75-80 upon Texaco, Inc. should be and the same is hereby affirmed. Payment of the \$3,000 civil penalty is suspended and the same shall not be due upon condition that no further violation for oil spills occurs within six (6) months from the date that this Order becomes final.

DONE at Lacey, Washington, this 15<sup>th</sup> day of May, 1976.

POLLUTION CONTROL HEARINGS BOARD

  
CHRIS SMITH, Chairman

  
W. A. GISSBERG, Member

  
WALT WOODWARD, Member

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